

Dame *Elizabeth Northcote Executrix of her Husband Sir Arthur Northcote.* *Appellant.*

Her Son Sir *Francis Northcote* and also *Alice Northcote* Widow, first the Wife and Relict of *John Northcote Esq;* Eldest Son of *Sir Arthur*, and afterwards the Wife and Relict of *William Northcote Esq;* *Respondents.*

Sir John Northcote had Issue Sir Arthur, who had Issue John by his first Wife, (John was first Husband to the Respondent Alice, and Died sans Issue) Sir Francis by his second Wife, the Appellant Dame Elizabeth.

The Respondent Alice Northcote's C A S E.

12 September
24 Car. 1.
19 July
1675.
24 June 1676.
29 June 1679.
Easter 1688.

SIR *John Northcote* demised all his Estate for Ninety nine Years to commence after his Death upon Trust, to raise Four thousand Pounds to be dispos'd off as he by Deed or Will should Appoint. Sir *John Northcote* by his Will, makes his Grandson *John Northcote* the Respondent *Alice* her first Husband, and *William Northcote* her Second Husband Executors, and Residuary Legatees, and particularly givesthem the Four thousand Pounds above mention'd, and Appoints them to pay out of the said Four thousand Pounds, several Legacies amounting in the whole to Two thousand Nine hundred Twenty six Pounds, to Twenty several Persons. Sir *John Northcote* died, and Sir *Arthur* notwithstanding the Lease in Trust, to Raise the Four thousand Pounds, Enters upon the whole Estate. *John Northcote* died, whereby the Respondent *Alice* became Intituled to the posession of *Newton St. Cyres* as her Jointure settled on her in Lieu of Eight thousand Pounds portion; Notwithstanding which, and altho' the Four thousand Pounds might have been raised by that time, Sir *Arthur* kept possession till the Year One thousand six hundred eighty Two. Sir *Arthur Northcote* died, having only paid Two hundred and fifty Pounds towards Intrest of the Four thousand Pounds, and by his Death the Estate subject to the Trust came to the Respondent Sir *Francis*.

As to the 2756 l. 1 s. 4 d. and the Appellants Claim to it.

Sir *John* by his Will takes notice, That he had paid severall considerable Sums for his Son Sir *Arthur's* Debts, and by his Will he forgives him all that Money, so as he indemnify'd his Executors from some other Sums of Money for which Sir *John* was surety with Sir *Arthur*, and afterwards paid before his Death taking Assignments of Sir *Arthur's* Securities, by vertue whereof Sir *John's* Executors compell'd Sir *Arthur* to Repay those Sums.

And thereupon in *Hilary Term 1681*, Sir *Arthur* Exhibited his Bill, and in *Easter Term 1682*, a Supplemental Bill to be Relieved touching those Sums, and about Raising the Four thousand Pounds.

Sir *Arthur* obtain'd a Decree (amongst other things) to be Reimbursed by the said *William Northcote*, and another Defendant one *Edward Row* proportionably, the Sum he had so paid in discharge of the said Debts with Intrest, which by his Bill he Charges to be but *Eleven hundred Pounds*; Yet Sir *John Franklin* by his Report dated the 31st of *March 1691*, Reports the same to be *Sixteen hundred Pounds*, and carries on Intrest for the same to the 10th of *June 1691*, and so makes the Total *Two thousand Seven hundred Fifty six Pounds One shilling and Fourpence*, Which Sum he Appoints the said *William Northcote* and the Respondent *Alice* his Wife to pay to the Appellant (who had reviv'd the said Suit) but never prosecuted further thereon, till after the Death of the Respondent *Alice* her Husband, and then the Appellant Seiz'd the Respondent *Alice* her Jointure by a Sequestration out of *Chancery*, which was afterwards discharg'd for Irregularity, and soon after the Appellant prosecutes another Sequestration, and gets possession of the Respondent *Alice's* Jointure, and hath kept the same three Years.

It appears by the same Report, That this Respondents Husband *William Northcote*, and the said *Edw. Row* receiv'd the greatest part of the said *Sixteen hundred Pounds*; And yet the Appellant will not prosecute their Administrators, though they are Parties to the Suit; But will lay the whole burthen upon this Respondent, (who during all those proceedings was a Feme Covert) and would also carry on Intrest upon Intrest, and Levy the whole out of this Respondents Jointure, which is all her Subsistence.

By the same Order Sir *Arthur* was Decreed to Account for the profits of the Trust Estate, and that what was unraised of the Four thousand Pounds and Intrest, should be advanc'd in Average by him, and the said *William Northcote* and *Alice* his Wife.

The now Respondent Sir *Francis Northcote* Exhibited his Original Bill in *Chancery*, to have the benefit of the said Decree as to the Four thousand Pounds; To which Bill the Respondent *Alice* and her said Husband, and the other Defendants Answer'd presently, But Sir *Francis* did not press the Appellant (his Mother) to Answer, and she did not Answer till Three Years after, viz. the 24th of *May 1692*, and after she had got Sir *John Franklin's* Report, and after an Appeal against her by the said *William Northcote* in his own and this Respondents Name touching the said Sums, was dismissed in the House of Lords.

Sir *Francis Northcote* brought his Cause to hearing, when twas Decreed amongst other things, That all Parties should account before Dr. *Edisbury*, for what they, or either of them, or the said Sir *Arthur Northcote* had receiv'd out of the said Estate subject to the said Four thousand Pounds according to the said former Decree. And that the Appellant (then Defendant) Dame *Elizabeth* should Account and Answer for the said Sir *Arthur's* Receipts so far as it should appear she had Assets, or could charge the said *William Northcote* and this Respondent *Alice*, as she (the said Dame *Elizabeth*) was Sir *Arthur's* Executrix. The which Charge the said *William*, and this Respondent *Alice* were to Answer and make good towards the finching of what the said Dame *Elizabeth* should be found accountable for to the Trust, and that what was unraised should be advanced in Average.

Dr. *Edisbury* made his Report, and thereby Certify'd amongst other things, That Sir *Arthur* had receiv'd out of the Trust Estate, after all deductions, *Three thousand Five hundred Thirty four Pounds Seven shillings and Eight pence halfpenny*, to which the Appellant Dame *Elizabeth* filed *Nine Exceptions*.

On Arguing these Exceptions, the Appellant got an allowance only of Two sums, viz. *Sixty five Pounds*, and *Twenty Pounds* towards finching the said Sum of *Three thousand Five hundred Thirty four Pounds Seven shillings and Eight pence halfpenny*.

So that the Report stands now Confirmed thus:

Received by Sir *Arthur* out of the Trust Estate after all Deductions
Out of which is Substracted by the Report, the said Money due to the Appellant being,

l.	f.	d.	q.
3449	17	08	2
2756	01	04	0

See there remains due from the Appellant Dame *Elizabeth* to be paid out of Sir *Arthur's* Assets,

The Appellant doth not deny nor Complain, but that these sums are rightly computed, and therefore there is no Colour to carry on Intrest when the whole Two thousand Seven hundred Fifty six Pounds One shilling and Fourpence was over paid to Sir *Arthur* before his Death, which was at *Easter, 1688*.

And the Matter of the Appellants 9th Exception being, that she was not allowed Intrest for the said Two thousand Seven hundred Fifty six Pounds One shilling and Fourpence, Nor that the same was not Deducted out of the Money payable on the Trust; It was then in the same Order Order'd by CONSENT, That the said sum of Two thousand Seven hundred Fifty six Pounds One shilling and Fourpence be deducted out of the profits of the Trust Estate, in the Appellant Dame *Elizabeth's* hands receiv'd by her Husband Sir *Arthur* at the time of the affirmance of the Decree for the same in the House of Lords.

Which two last ORDERS and REPORT are the only matters Appaled against; And the Chief matter Complained of is, that the said Two thousand seven hundred Fifty six Pounds One shilling and Fourpence ought not to be sunk and deducted, but carry'd on with Intrest as a distinct Debt.

The Respondent humbly Insists, That the said Orders and Decree are just for finching the one demand out of the other.

For that both the Demands do arise by the same Will, and were Originally between the Heir and Executors of the same Testator.

Both the Demands are mutually Decreed by the same Decree of the 11th of *July* the 35 Car. 2. So that it is natural Justice, that both Parties should mutually perform it, which cannot effectually be done, but by discounting one demand out of the other.

And the rather in this Case, for that the Appellant pretends want of Assets, and the Respondent and her Husband have admitted Assets; so that if there be no discount and deduction, the Demand against the Appellant or the greatest part of it may be lost.

The Decree of the 4th of *May* the 5th of *Gul & Mar*, which Expressly Decrees, That one Demand shall be sunk, and deducted out of the other, hath been made above Ten Years, and the Appellant hath acquiesced in it all that time without complaint.

For that it appears by the said Report (not controverted in that Party) that this Respondent hath not only Answer'd to the Trust the said Two thousand seven hundred Fifty six Pounds One shilling and Fourpence in performance of the said Decree, and also the Profits receiv'd by her and her Husband; but hath also satisfy'd for her Average with an overplus of 255 l. 8s. by Monies paid the Legatees, who are incapable of repaying this Respondent.

But above all, the Respondent humbly Insists, that this Appeal ought to be dismissed without entring into the Merits of the Cause, for that it is to be reliev'd against the APPELLANTS own CONSENT contain'd in the last Order, which was never done by any Court of Justice, especially, when the Appellant does not complain against the Words (by CONSENT) being put into the Order.

Whereas the Appellant Objects that Sir *Arthur* owed Debts, of a higher nature then the Money for which he was accountable out of the Trust Estate, which is said to be in the nature of a Debt by Simple Contract.

There is no proof in the Cause, or at least none was ever read, to prove that there are any such Debts of a higher Nature, or that the Appellant hath paid any beyond Assets.

But besides this Debt, for Profits receiv'd of the Trust Estate, was Decreed against Sir *Arthur* himself, by the first Decree of the 11th of *June 35 Car. 2.* and a Decree in *Chancery* is equal to a Judgment at Common Law.

The Decree and Orders complain'd of, overthrow the Decree in the other Cause, twice Reheard and affirm'd in the House of Lords, whereby the Two thousand seven hundred Fifty six Pounds One shilling and Fourpence is confirmed to the Appellant.

That Decree is not in the least impeach'd, but is allowed and admitted to be good; but the only Question now is, whether the Appellant shall be paid twice, for now it appears Sir *Arthur* had more Money in his hands then would satisfy this Two thousand seven hundred Fifty six Pounds One shilling and Fourpence, and yet the Appellant would levy it again upon the Respondent *Alice*, contrary to her own consent in the last Order.

And the only Matters in debate at those Rehearings and Appeal, were only touching severall particular Sums which went towards making up the said One thousand Six hundred Pounds, Whether the same were forgiven by Sir *John Northcote's* Will or not.

Wherefore this Respondent having been above One and Twenty Years in Chancery, as a Defendant and not as Plaintiff, Defending her self and her Jointure against such unreasonable demands, Humbly prays that the said Appeal may be Dismissed with Costs.

Debts.